

## Eligibility for Brownfields Funding

On January 11, 2002, President George W. Bush signed into law the *Small Business Liability Relief and Brownfields Revitalization Act*. The Brownfields Law expands potential federal financial assistance for brownfield revitalization, including grants for assessment, cleanup, and job training. The new law also limits the liability of certain contiguous property owners and prospective purchasers of brownfield properties, and clarifies innocent landowner defenses to encourage revitalization and reuse of brownfield sites. The Brownfields Law also includes provisions to establish and enhance state and tribal response programs, which will continue to play a critical role in the successful cleanup and revitalization of brownfields.

This summary highlights the eligibility requirements of the new law.

### **Eligible Entities and Properties under the New Law**

**There are two aspects to brownfields funding eligibility: 1) Eligible Entities** (who can receive a brownfields grant), and **2) Eligible Properties** (which properties are eligible for funding). Parties eligible for brownfields grants include:

Type of Grant	Eligible Entities
Brownfields <i>assessment grants</i>	<ul style="list-style-type: none"><li>“Eligible entities” as defined in the new Brownfields Law</li></ul>
Brownfields <i>revolving loan fund grants</i>	<ul style="list-style-type: none"><li>“Eligible entities” as defined in the new Brownfields Law</li></ul>
Brownfields <i>direct cleanup grants</i>  To be used only for the remediation of <u>properties owned by the eligible party</u>	<ul style="list-style-type: none"><li>“Eligible entities” as defined in the new Brownfields Law; <i>and Nonprofit Organizations</i> (note: EPA will use the definition of nonprofit organizations contained in Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106-107)</li></ul>

**The new Brownfields Law defines “Eligible Entities” as:**

- General purpose unit of local government (note: for purposes of the brownfields grant program, EPA defines general purpose unit of local government as a “local government” as that term is defined under 40 CFR Part 31)
- Land clearance authority or other quasi-governmental entity that operates under the supervision and control of or as an agent of a general purpose unit of local government

- Government entity created by a state legislature
- Regional council or group of general purpose units of local government
- Redevelopment agency that is chartered or otherwise sanctioned by a state
- State
- Indian tribe other than in Alaska (note: intertribal Consortia are eligible for funding in accordance with EPA's policy for funding intertribal consortia)
- Alaska native Regional Corporation and an Alaska Native Village Corporation and the Metlakatla Indian community

**Under the new Brownfields Law, Eligible Properties include:**

- Properties that meet the definition of a Brownfield Site under the new Brownfields Law
- Properties for which EPA has made a property-specific funding determination, based upon the criteria provided in the new Brownfields Law.

**The new Brownfields Law defines a “Brownfield Site” to mean:** “...real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.” Brownfield sites include residential, as well as commercial and industrial properties.

**Property-Specific Determinations of Eligibility**

**Property-Specific Determinations:** The Brownfields Law excludes certain types of property from funding eligibility, *unless EPA makes a property-specific funding determination:*

- Facilities subject to planned or ongoing CERCLA removal actions.
- Facilities that are subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree or to which a permit has been issued by the United States or an authorized state under the Solid Waste Disposal Act (as amended by the Resource Conservation and Recovery Act (RCRA)), the Federal Water Pollution Control Act (FWPCA), the Toxic Substances Control Act (TSCA), or the Safe Drinking Water Act (SDWA).
- Facilities subject to corrective action orders under RCRA (sections 3004(u) or 3008(h)) and to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures.
- Land disposal units that have filed a closure notification under subtitle C of RCRA and to which closure requirements have been specified in a closure plan or permit.
- Facilities where there has been a release of polychlorinated biphenyls (PCBs) and are subject to remediation under TSCA.
- Portions of facilities for which funding for remediation has been obtained from the Leaking Underground Storage Tank (LUST) Trust Fund.

**Criteria for Property Specific Funding Determinations:** The new legislation allows EPA to award financial assistance *to an eligible entity* for assessment or clean up activities at the site, if it is found that financial assistance will:

1. Protect human health and the environment, **and**
2. Either:
  - promote economic development, or

- enable the creation of, preservation of, or addition to parks, green ways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

**Facilities *not* Eligible for Brownfields Funding:**

- Facilities listed (or proposed for listing) on the National Priorities List (NPL).
- Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered into by parties under CERCLA.
- Facilities that are subject to the jurisdiction, custody or control of the United States government.